

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Conor O'Shea	Team: Squad #5	CCRB Case #: 201910484	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Friday, 11/22/2019 12:00 AM, Friday, 11/22/2019 6:35 PM	Location of Incident: In front of 2 West 129th Street; Mass Arrest Processing Center at 1 Police Plaza	Precinct: 32	18 Mo. SOL 5/22/2021	EO SOL 1/6/2022	
Date/Time CV Reported Thu, 12/05/2019 8:10 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Thu, 12/05/2019 8:10 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Gregory Acerra	06077	952380	SRG 5

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. DI Christophe McIntosh	00000	922752	028 PCT
2. POF Colleen Willis	07822	964838	023 PCT
3. LT Michael Butler	00000	934553	023 PCT
4. POM Eduardo Mejia	10215	960929	SRG 1
5. POM Jorel Irizarry	26189	964069	023 PCT
6. POM Jefferson Allie	26874	964873	023 PCT
7. POM Raymond Chung	17715	958405	023 PCT
8. POM Jonathan Scheine	05667	964757	023 PCT
9. SGT Joseph Curto	01088	950264	SRG 5
10. POM Eric Dawson	17827	936441	SRG 5
11. POM Paul Marsh	03256	950824	TB M/TF
12. LT Louis Padula	00000	907727	SRG 5
13. POM Juan Matos	09806	940438	SRG 5
14. POM Brandon Ortiz	04224	950986	SRG 5
15. POM Sean White	05342	954421	SRG 5
16. POM Gal Tal	27244	955557	SRG 5
17. POF Jennifer McGowan	05462	958903	SRG 5
18. POM Vitaliy Ionashko	19374	959704	SRG 5
19. POM Michael Kovalik	25801	948368	SRG 3
20. DI Andrew Hillery	00000	925457	SRG 1

Officer(s)	Allegation	Investigator Recommendation
A.POM Gregory Acerra	Force: In front of 2 West 129th Street in Manhattan, Police Officer Gregory Acerra used physical force against § 87(2)(b)	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
B.POM Gregory Acerra	Off. Language: At the Mass Arrest Processing Center at 1 Police Plaza in Manhattan, Police Officer Gregory Acerra made remarks based on § 87(2)(b) gender identity.	
§ 87(4-b) § 87(2)(g)		

Case Summary

On December 5, 2019, § 87(2)(b) filed this complaint online with the CCRB.

On November 22, 2019, at approximately 6:35 p.m., § 87(2)(b) was at a protest against police brutality in Harlem when he witnessed Sergeant Joseph Curto of SRG 5 and other SRG officers arresting an unidentified man (hereinafter referred to as Male-1) in front of 2 West 129th Street. Police Officer Gregory Acerra, also from SRG 5, grabbed § 87(2)(b) and forcibly took him to the ground (**Allegation A: Force**, § 87(2)(g)). PO Acerra arrested § 87(2)(b) and processed his arrest at the Mass Arrest Processing Center (MAPC) located within 1 Police Plaza in Manhattan. At the MAPC, PO Acerra repeatedly misgendered § 87(2)(b) who is a transgender man—by referring to him with female pronouns (she, her) even though § 87(2)(b) had already explained that he uses male pronouns (he, him) (**Allegation B: Offensive Language**, § 87(2)(g)). PO Acerra also allegedly repeatedly referred to § 87(2)(b) as “it” (**subsumed within Allegation B**). § 87(4-b) § 87(2)(g) PO Acerra issued § 87(2)(b) two summonses for § 87(2)(a) 160.50 (**Board Review 01–02**).

The investigation obtained cellphone footage (**Board Review 03**, summarized at **Board Review 04**), a photojournalist’s live-stream video from YouTube (**Board Review 05**, summarized at **Board Review 06**), and BWC footage from the NYPD (relevant videos at **Board Review 07–22**, summarized at **Board Review 23–36**). All references to video evidence in this report refer to the time stamp in the video player, rather than any on-screen clock embedded in the footage itself.

The investigation was delayed by § 87(2)(b) criminal defense attorney preventing § 87(2)(b) from being interviewed while his criminal case was open, issues and delays in obtaining all relevant BWC footage from the NYPD, and the COVID-19 global pandemic.

Findings and Recommendations

Allegation (A) Force: In front of 2 West 129th Street in Manhattan, Police Officer Gregory Acerra used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was nearby when Sgt. Curto and other SRG officers began arresting the unidentified man (Male-1) during the protest. It is also undisputed that PO Acerra took § 87(2)(b) to the ground in the street, handcuffed him, and later issued him two § 87(2)(a) 160.50 summonses (**Board Review 01–02**). It is further undisputed that PO Acerra did not charge § 87(2)(b) with obstructing governmental administration (OGA), resisting arrest, assault on a police officer, or harassment. § 87(2)(g)

§ 87(2)(b) (**Board Review 37**) recounted that he was standing on the sidewalk while participating in chants and peacefully handing out flyers with protest-related literature when he observed Male-1’s arrest by Sgt. Curto and other SRG officers in the street. § 87(2)(b) chants were generally critical of the NYPD (e.g. “Cops out of the MTA” and “NYPD is racist”) but did not contain any threats. § 87(2)(b) verbally objected to Male-1’s arrest by telling Sgt. Curto and the SRG officers, “Get off of him.” § 87(2)(b) began walking towards them while remaining on the sidewalk. § 87(2)(b) did not physically intervene in Male-1’s arrest, did not touch any officers, and never stepped off of the sidewalk into the street. Suddenly, PO Acerra and an unidentified officer pushed § 87(2)(b) into the street from behind, causing him to drop his armful of flyers. § 87(2)(b) could not recall any of what happened next. His first memory after being pushed into the street was of being facedown on the ground with PO Acerra on top of him, handcuffing him and pressing his face into the ground. § 87(2)(b) was not sure if he lost consciousness, although he could not remember anything between when PO Acerra pushed him into the street and when he was on the ground. § 87(2)(b) body went “limp fish” on the ground and he completely surrendered to being handcuffed.

§ 87(2)(b) further recounted that he sought medical treatment at § 87(2)(b) emergency room later that same night after being released from custody. His eyes were notably dilated, he was in “a lot” of head pain, and he remained dazed and confused even several hours after the incident. § 87(2)(b) received a CT scan, which revealed that he had a concussion and skull microfractures. § 87(2)(b) did not receive any stitches or sustain any other fractures. § 87(2)(b) was discharged from the ER with a referral to a concussion specialist and a physical therapist. § 87(2)(b) attributed the concussion and skull microfractures to his head hitting the pavement when PO Acerra took him to the ground, though as noted above, § 87(2)(b) was entirely unable to testify to the manner in which PO Acerra brought him to the ground. § 87(2)(b) concussion symptoms persisted for several weeks following this incident. These symptoms included headaches, as well as difficulty with reading, concentrating, and memory, such as forgetting his place in a conversation. § 87(2)(b) concussion caused him to take medical leave from work for two and a half weeks.

§ 87(2)(b) medical records (see Privileged Records) confirm that he underwent a CT scan and was diagnosed with a concussion and unspecified “microfractures.” The medical records do not specifically indicate where the microfractures were, nor do they provide further discussion of the microfractures diagnosis. § 87(2)(g)

PO Acerra (**Board Review 38**) testified that he first observed § 87(2)(b) in the street—not on the sidewalk—as § 87(2)(b) was grabbing and shoving Sgt. Curto in what appeared to be an attempt to physically interfere in Sgt. Curto’s arrest of Male-1. PO Acerra grabbed § 87(2)(b) by his arms and pulled him off of Sgt. Curto in order to prevent any further interference in the arrest. PO Acerra ordered § 87(2)(b) to stop resisting. § 87(2)(b) turned to face PO Acerra and punched PO Acerra one time on the left side of the head with a closed fist. PO Acerra described himself as being “not really” injured by the punch. PO Acerra then grabbed one of § 87(2)(b) arms, pulled it downwards, and “guided” § 87(2)(b) down and to the side, onto the ground, in order to arrest him. PO Acerra explained that it was tactically easier to handcuff § 87(2)(b) while § 87(2)(b) was facing away from him on the ground rather than standing up. This positioning also mitigated the risk of § 87(2)(b) striking PO Acerra again. PO Acerra denied seeing § 87(2)(b) head hit the ground. § 87(2)(b) did not appear injured to PO Acerra. PO Acerra did not believe that § 87(2)(b) showed any signs of being concussed. However, PO Acerra acknowledged that he has no medical training or experience with respect to concussions.

PO Acerra explained that he took no further enforcement action beyond issuing § 87(2)(b) summonses for § 87(2)(a) 160.50 because, before the protest and during arrest processing, unidentified NYPD executives stated that the NYPD’s enforcement strategy would be to issue anyone apprehended during the protest merely a criminal summons for disorderly conduct. PO Acerra believed that § 87(2)(b) could also have been arrested for resisting arrest and OGA. PO Acerra believed that § 87(2)(b) may also have committed assault on a police officer by punching him, but he was not sure because § 87(2)(b) punch did “not really” injure him. PO Acerra did not prepare a TRI report because he was not injured, nor did he believe that his takedown of “guid[ing]” § 87(2)(b) to the ground rose to a reportable level of force. PO Acerra would have prepared a TRI report if § 87(2)(b) arrest had been fully processed and set to be arraigned because of the nature of the charges that he would have included, such as resisting arrest, OGA, and possibly assault on a police officer.

Sgt. Curto (**Board Review 39**) was interviewed approximately 18 months after the incident, and he acknowledged that he did not have a strong memory of it. Sgt. Curto remembered being nearby while PO Acerra made an arrest, but he did not remember any of the specifics of that arrest. When asked if PO Acerra was ever punched in the face while arresting someone that night, Sgt. Curto said, “Not from what I recall, no.” Sgt. Curto’s independent recollection of his own arrest of Male-1 did not include any mention of interference by other civilians. When asked specifically if any civilians interfered in that arrest, Sgt. Curto said, “It happened very fast, I

don't—I don't recall at this time.” When asked if any civilians grabbed onto him while arresting Male-1, Sgt. Curto said, “Me, myself, I don't remember it happening, but somebody said somebody was on my back, so it might've happened without me realizing it.” Sgt. Curto did not remember who told him this or who was allegedly “on” his back, nor could he provide any details for what it meant for someone to be “on” his back.

There is no video evidence directly depicting PO Acerra's actions in taking § 87(2)(b) to the ground. PO Acerra did activate his BWC during the apprehension, but the camera was largely obscured either by his clothing or because he was in such close proximity to others (**Board Review 17**, summarized at **Board Review 31**). By the time his BWC was no longer obscured, § 87(2)(b) was already fully handcuffed. Available footage from bystanders includes cell phone video at **Board Review 03** (entire video) and a § 87(2)(b) video at **Board Review 05** (relevant portion between 07:30 and 10:20). These videos show that there were dozens of protesters in the roadway before, during, and after this incident, and that the area was generally chaotic with chanting, yelling, and numerous civilians in proximity to the officers making arrests. The cell phone video, § 87(2)(b) video, and nearly all of the BWC footage does not directly show § 87(2)(b) actions or the area he was in before he was on the ground.

However, a very brief portion of Lt. Padula's BWC footage (**Board Review 16**, between 00:43 and 01:00) shows a civilian other than Male-1 physically attempting to interfere in Male-1's arrest in the street. At **Board Review 40**, the investigation created a side-by-side comparison of a screenshot of Lt. Padula's BWC footage (on the left) and a known image of § 87(2)(b) (on the right). Based on this comparison, and the BWC footage confirming the uniqueness of § 87(2)(b) multiple articles of clothing among nearby civilians, the investigation determined that Lt. Padula's BWC footage depicts § 87(2)(b) becoming physically involved in Male-1's arrest. § 87(2)(g)

However, there is no video footage showing what § 87(2)(b) did after this fleeting moment. § 87(2)(g)

NYPD Patrol Guide Procedure 221-01 (**Board Review 41**) authorizes the use of force “when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances.”

§ 87(2)(g)

Allegation (B) Offensive Language: At the Mass Arrest Processing Center at 1 Police Plaza in Manhattan, Police Officer Gregory Acerra made remarks based on § 87(2)(b) perceived gender identity.

It is undisputed that § 87(2)(b) informed PO Acerra of his preferred gender pronouns at the scene of his arrest before being transported to the MAPC at 1 Police Plaza.

§ 87(2)(b) provided generally consistent testimony in his website complaint (**Board Review 42**) and CCRB testimony (**Board Review 37**). § 87(2)(b) alleged that PO Acerra misgendered him—referring to him with the incorrect gender pronouns—during arrest processing. PO Acerra used the correct pronouns (he, his) when speaking directly to § 87(2)(b). However, PO Acerra misgendered § 87(2)(b) by using female pronouns (she, her) when referring to § 87(2)(b) in conversation with other officers in § 87(2)(b) presence. Specifically, PO Acerra repeatedly said, verbatim, “It’s a she,” “It’s a girl,” “She’s female,” “Put it with the females,” and “Put her with the females.” § 87(2)(b) described misgendering as humiliating and dangerous because it outed him as transgender, which could expose him to retaliation, abuse, or violence from others present. Moreover, PO Acerra ultimately lodged § 87(2)(b) in the holding cell for female prisoners.

The two summonses that PO Acerra wrote for § 87(2)(b) (**Board Review 01–02**) both list § 87(2)(b) name as “§ 87(2)(b).” The name listed on § 87(2)(b) New York State ID (**Board Review 43**) is “§ 87(2)(b)” with the sex listed as female.

During PO Acerra’s CCRB interview (**Board Review 38**), PO Acerra repeatedly referred to § 87(2)(b) with female pronouns (she, her). PO Acerra did so consistently throughout the interview, and he did so without any particular prompting regarding § 87(2)(b) gender or what pronouns should be used for him. When PO Acerra was asked specifically whether he asked what § 87(2)(b) pronouns were, PO Acerra said he did, and that he always does so. PO Acerra remembered asking § 87(2)(b) for his name and whether he preferred to be referred to as male or female, but he did not remember how § 87(2)(b) responded. Throughout § 87(2)(b) arrest processing, PO Acerra referred to § 87(2)(b) as “pretty much whatever she [sic] wanted to be referred to, you know, I asked cause I don’t wanna assume, so it’s whatever gender she [sic] gave me—I don’t remember which one it was she [sic] told me she went by.” When PO Acerra was asked how he referred to § 87(2)(b) during arrest processing while speaking with other officers, PO Acerra said he tried to avoid names and instead typically refers to his arrestees as “my perp” or “person I brought in.” When asked whether he ever referred to § 87(2)(b) as “she” or female to other officers, PO Acerra said, “Possibly, yeah.” PO Acerra denied ever saying, “It’s a she,” “It’s a girl,” or “Put it with the females,” in reference to § 87(2)(b). PO Acerra initially testified that § 87(2)(b) was lodged in the female cells, but later said he did not remember which cells § 87(2)(b) was lodged in.

Sgt. Curto (**Board Review 39**) acknowledged seeing PO Acerra at 1 Police Plaza with his arrestee (i.e. § 87(2)(b)). However, Sgt. Curto could not describe PO Acerra’s arrestee at all. Sgt. Curto was never close enough to PO Acerra to see or hear what was going on with PO Acerra and § 87(2)(b).

The investigation did not obtain any BWC footage from § 87(2)(b) arrest processing at 1 Police Plaza. PO Acerra’s BWC video (**Board Review 17**) ends after he searched § 87(2)(b) incident to his arrest in Harlem before § 87(2)(b) was transported. However, PO Acerra’s BWC video (09:50 to 11:10) shows that once PO Acerra obtained § 87(2)(b) ID at the scene of his arrest, § 87(2)(b) told PO Acerra, “My name’s § 87(2)(b) and that the ID was “wrong.” Shortly thereafter (19:50 to 21:38), before § 87(2)(b) boarded the transport vehicle from Harlem, PO Acerra asked § 87(2)(b) “Do you prefer ‘ma’am’ or ‘sir?’” § 87(2)(b) replied, “Sir.” PO Acerra asked again for clarification, and § 87(2)(b) reiterated that he preferred “sir.” There is no indication in the footage that PO Acerra did not understand or hear § 87(2)(b) remarks.

§ 87(2)(g)
It is undisputed that § 87(2)(b) informed PO Acerra at the scene of his arrest that his ID was “wrong,” that his name was actually § 87(2)(b) and that he wished to be referred to with male pronouns. PO Acerra did not deny referring to § 87(2)(b) as female during arrest processing, and he even acknowledged that he may have done so. PO Acerra

used § 87(2)(b) middle name § 87(2)(b), a traditionally female name) as the first name on the summonses. § 87(2)(g)

Officers are expressly prohibited from “[u]sing discourteous or disrespectful remarks” about “another person’s...gender, [or] gender identity/expression.” Furthermore, the NYPD requires that officers “shall address the public using pronouns, titles of respect, and preferred names appropriate to the individual’s gender identity/expression as expressed by the individual. The term ‘gender’ shall include actual or perceived sex and shall also include a person’s gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the legal sex assigned to that person at birth.” NYPD Patrol Guide Procedure 203-10 (Board Review 44).

§ 87(2)(g)

§ 87(4-b) § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first and only CCRB complaint in which § 87(2)(b) has been named a complainant or victim (**Board Review 46**).
- PO Acerra has been a member of service for eight years and has been named a subject in two other CCRB complaints and four other allegations, none of which was substantiated. § 87(2)(g)

Mediation, Civil, and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of June 23, 2020, the NYC Officer of the Comptroller had no record of any Notice of Claim being filed regarding this incident (**Board Review 47**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: #05

Investigator: DG
Signature

IM Giansante for Inv. O’Shea
Print Title & Name

August 11, 2021
Date

CCRB Case # 201910484

Squad Leader: *Daniel Giansante* IM Daniel Giansante August 11, 2021
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date